



**Office of Public Utility Counsel**  
**P.O. Box 12397**  
**Austin, Texas 78711-2397**  
**(Tel.) 512/936-7500 (Fax) 512/936-7520**

**Suzi Ray McClellan**

Public Counsel

November 19, 2002

William F. Caton  
Acting Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Reply Comments – Third Further NPRM, *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*,  
CC Docket Nos. 96-115 and 96-149

Dear Mr. Caton:

The Texas Office of Public Utility Counsel and Colorado Office of Consumer Counsel ("Texas OPC" and "Colorado OCC") wish to file the enclosed reply comments in the above-cited docket, relating to telecommunications' carriers use of customer proprietary network information ("CPNI").

Respectfully yours,

Suzi Ray McClellan  
Public Counsel  
State Bar No. 16607620

Kenneth V. Reif  
Director

\_\_\_\_\_/s/  
Sara J. Ferris  
Assistant Public Counsel  
State Bar No. 50511915

\_\_\_\_\_/s/  
Dian Callaghan  
Administrative Director

TEXAS OFFICE OF  
PUBLIC UTILITY COUNSEL  
P.O. Box 12397  
Austin, Texas 78711-2397  
512/936-7500 (Telephone)  
512/936-7520 (Facsimile)

COLORADO OFFICE OF  
CONSUMER COUNSEL  
1580 Logan Street, Suite 740  
Denver, Colorado 80203  
303/894-2121 (Telephone)  
303/894-2117 (Facsimile)

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use of	)	
Customer Proprietary Network Information	)	
And Other Customer Information	)	
	)	
Implementation of the Non-Accounting	)	
Safeguards of Sections 271 and 272 of	)	CC Docket No. 96-149
The Communications Act of 1934, as	)	
Amended	)	

**JOINT REPLY COMMENTS OF  
THE TEXAS OFFICE OF PUBLIC UTILITY COUNSEL &  
THE COLORADO OFFICE OF CONSUMER COUNSEL**

The Texas Office of Public Utility Counsel ("Texas OPC") and the Colorado Office of Consumer Counsel ("Colorado OCC") (together, "Joint Commentators"), respectfully jointly submit these reply comments to emphasize to the Federal Communications Commission ("Commission") what the impact that the comments of certain carriers would have on customers' privacy rights, if adopted by the Commission. In particular, Texas OPC and Colorado OCC reply to comments on two of the issues the Commission sought comments on in the *Third Further Notice of Proposed Rulemaking*, FCC 02-214 (released July 25, 2002) ("*Third FNPRM*"), as published in the September 20, 2002 issue of the *Federal Register*. Specifically, these reply comments address: 1) the CPNI implications when a carrier goes out of business, sells all or part of its customer base, or seeks bankruptcy protection; and 2) the need for additional enforcement mechanisms or protections for customer proprietary information.

**I. ADDITIONAL NOTICE AND APPROVAL REQUIREMENTS ARE NECESSARY WHEN CPNI IS TRANSFERRED FROM AN EXITING TO AN ACQUIRING CARRIER.**

Joint Commentators agree with AT&T Corp. (“AT&T”), Nextel Communications, Inc. (“Nextel”), Qwest Services Corporation (“Qwest”), SBC Communications, Inc. (“SBC”), Sprint Corporation (“Sprint”), the United States Telecom Association (“USTA”), and Verizon’s comments that an exiting carrier may share CPNI with the acquiring carrier, whether the acquisition is a result of an asset sale or transfer or discontinuance of service due to nonpayment or bankruptcy, for the limited and important purpose of ensuring a smooth and seamless transfer of the customers to the acquiring carrier. Without the CPNI, customers may be transferred only with their dial tone but without their additional features, additional lines, or 1+ long-distance service.

Unfortunately, there are numerous instances of competitive local exchange carriers (“CLECs”) exiting the market for a variety of reasons, primarily financial inability to continue serving customers. Some states, including Colorado, have default provider or “snap back” rules in which the state utility commission designates a default provider, or the underlying facilities-based provider acts as the default for those customers who, for whatever reason, fail to select an alternative carrier. In this case, a substantial number of customers are simply transferred to the default provider after notice by the exiting carrier.<sup>1</sup> The acquiring or default carrier is given access to the customer service records (“CSR”) of the exiting carrier to enable a smooth transfer of service. These CSRs include CPNI. Often, there is little time to contact each customer and seek his or her approval to transfer their service, including all features and their PIC. Opt-in approval to share the CPNI with the acquiring carrier simply would not be feasible in this hurried situation.

However, the Joint Commentators part company with many of the carriers over notice and additional CPNI customer approval *following* the transfer to the acquiring carrier. Joint

---

<sup>1</sup> Rule 4 *Code of Colorado Regulations* (CCR) 723-25.

Commentators agree with Qwest that “the Commission should adopt streamlined and narrowly-tailored rules that allow CPNI to transfer with associated customer accounts....Such regulations should be based on notice to consumers of the proposed transaction....”<sup>2</sup> Qwest proposes a CPNI/customer account transfer rule predicated on a notice process advising customers that the acquiring carrier is being given their CPNI for purposes of ensuring a smooth transition.<sup>3</sup>

Sprint and the Electronic Privacy Information Center (“EPIC”) then recommend that the acquiring carrier be required to obtain customer CPNI approvals post-transfer, rather than assuming the customer’s privacy response to the acquiring carrier would be the same as to its existing, now exiting, carrier.<sup>4</sup> Those customers who simply chose another carrier rather than defaulting or being acquired by another carrier would be given the opportunity by the new provider to determine whether their CPNI should be shared and with whom. Texas OPC and Colorado OCC believe that this same requirement should apply when the customer is transferred to another provider. Customers may have the same response to CPNI disclosure to non-affiliated, non-telecommunications third parties, but a different response to disclosure with the new provider’s telecommunications affiliates or agents. Customer approval cannot be assumed; it must be obtained.

EPIC also advocates an opt-in consent since the acquiring carrier, or successor in interest, is not an affiliated party as defined by the Commission in its CPNI rules. Joint Commentators support an opt-in approach for CPNI disclosure to any third party, whether affiliated or not and whether in a communications-related business or not. The Commission’s rules, however, make a distinction on the method of consent required, whether opt-in or opt-out, based on the nature of the party receiving the information and that party’s relationship to the carrier. While Joint Commentators would prefer an opt-in requirement for the acquiring provider to obtain customer

---

<sup>2</sup> Qwest Comments at 2.

<sup>3</sup> Id. at 3.

<sup>4</sup> Sprint Comments at 6; EPIC Comments at 2.

approval for any CPNI disclosure, we believe the critical requirement is that the acquiring carrier must re-notice its new customers and obtain CPNI disclosure approvals consistent with the Commission's rules.

## **II. OTHER PROTECTIONS ARE NECESSARY TO DETER VIOLATIONS AND PROTECT CONSUMER PRIVACY RIGHTS**

Joint Commentators disagree with assertions made by Nextel Communications, Sprint Corporation and Verizon that no additional enforcement mechanisms or protections are needed to protect CPNI. Nextel states that the existing statutory and regulatory provisions applicable to CPNI are sufficient and that the existing enforcement framework “would be distorted” if additional regulations were imposed.<sup>5</sup> Texas OPC and Colorado OCC disagree. While existing statutory and regulatory provisions such as Sections 208 and 209 of the Communications Act do provide protections against violations, additional measures would not “distort the enforcement framework.”<sup>6</sup> The Commission should not be deterred in its efforts to fully protect the privacy interests of ratepayers. Privacy rights are largely intangible in nature and once violated, difficult to fully remedy. However, this should not prevent the Commission from attempting to do so.

Additionally, privacy rights are susceptible to repeated violations as information is re-used and re-sold to list brokers and others who market personal information. With this in mind, Texas OPC and Colorado OCC recommend that the Commission amend Section 222 to include a provision that any telecommunications carrier that violates Section 222 must immediately notify (and follow up with written notification) the receiving party (with whom it has inappropriately shared information) that the carrier was not authorized to share said information and the receiving party must delete the information from its records and is prohibited from using said information. By requiring notification to the receiving party, the unauthorized use and breach of privacy would be minimized.

---

<sup>5</sup> Nextel Communications Comments at 7.

Sprint and Verizon suggest that because there is currently no evidence of any abuse of the confidentiality of customer proprietary information, the Commission should not “impose” new regulations regarding customer proprietary information.<sup>7</sup> Joint Commentators disagree. As Sprint acknowledged, there does exist the very real possibility that some carrier or carriers will abuse their access to the CPI/CPNI of their customers. That no violation has yet been investigated does not justify a failure to provide for protections when a violation does occur. Further, by adding the notice requirement described above and actively implementing the existing statutory and regulatory provisions such as Sections 208 and 209, the Commission can possibly deter violations by making clear to carriers that violations of Section 222 will not occur without consequences.

### **III. CONCLUSION**

Texas OPC and Colorado OCC recommend that the Commission require additional notice and approval when CPNI is transferred from an exiting to an acquiring carrier, as described above and require carriers who have violated Section 222 to immediately notify receiving parties (with whom they have inappropriately shared the information) of the violation and the lack of authority to use the information. As the representatives of Texas and Colorado residential and small commercial consumers, Texas OPC and Colorado OCC thank you for your consideration of our views and concerns.

Dated: November 19, 2002

Respectfully submitted,

Suzi Ray McClellan  
Public Counsel  
State Bar No. 16607620

Kenneth V. Reif  
Director

---

<sup>6</sup> 47 U.S.C. §§ 208 and 209.

<sup>7</sup> Sprint Comments at 3-4; Verizon Comments at 4.

\_\_\_\_\_/s/\_\_\_\_\_  
Sara J. Ferris  
Assistant Public Counsel  
State Bar No. 50511915

TEXAS OFFICE OF  
PUBLIC UTILITY COUNSEL  
P.O. Box 12397  
Austin, Texas 78711-2397  
512/936-7500 (Telephone)  
512/936-7520 (Facsimile)

\_\_\_\_\_/s/\_\_\_\_\_  
Dian Callaghan  
Administrative Director

COLORADO OFFICE OF  
CONSUMER COUNSEL  
1580 Logan Street, Suite 740  
Denver, Colorado 80203  
303/894-2121 (Telephone)  
303/894-2117 (Facsimile)